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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,290	01/16/2002	Stefan Gabriel	00167-434001 / 02-31-0352	2333
7590 12/02/2004			EXAMINER	
JOEL R. PETROW Smith & Nephew 1450 Brooks Road Memphis, TN 38116			BAXTER, JESSICA R	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/046,290

Applicant(s)

GABRIEL ET AL.

Examiner

Jessica R Baxter

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 19-21, 23-35 and 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-16, 19-21, 23-35 and 37 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, 9-16, 19-21, 23—35 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,451,030 to Li et al.

Li discloses a tissue anchor insertion tool comprising a first member (element 13) defining a region configured to receive a tissue anchor (anchor 1); a second member (sheath member 6) positioned to substantially cover the tissue anchor during introduction to a surgical site (FIG. 2); an applicator (spring lever 14), including a spring comprising a straight portion and a ramp portion, configured to engage the tissue anchor; and a flexor (lever 14) configured to engage the applicator to deploy the anchor; and wherein the applicator and flexor are configured such that the applicator and flexor undergo relative axial motion when the applicator is deflected by the flexor (FIGS. 2 and 3). Li discloses an applicator that includes a first end portion (lever 14) fixed to the first member, and a second end portion extending into the region to engage the tissue anchor (FIGS. 2 and 3). Li discloses that the applicator is configured to deflect laterally to a direction of relative motion between the members (FIGS. 2 and 3). Li discloses a contact (elements 15)

extending between the first and second members, actuation of the contact causes relative motion between the first member and the second member.

### ***Response to Arguments***

3. Applicant's arguments filed 25 August 2004 and 15 July 2003; have been fully considered but they are not persuasive.
4. Applicant argues that Li et al. '030 does not disclose that the applicator is deflected to deploy the anchor and that a force is not applied to the applicator during deployment (page 9 of remarks dated 15 July 2003). The applicator of Li et al. '030 is deflected by engaging the elements (15) with the straight portion of the applicator (14). The engagement of elements 15 with the straight portion of the applicator 14, causes the applicator (14) to deflect outwardly and thus deploy the anchor (1). In addition, claim 31 does not claim a force to be applied to the applicator. Claim 31 claims "engaging an applicator", which is not necessarily a force to be applied to the applicator.

### ***Allowable Subject Matter***

5. Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.


Art Unit: 3731

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

  
jrb

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER

11/23/04.